

SENATE, No. 2322

[March 11, 2010 – Reprinted as amended text of the Senate amendment (Ways and Means) to the House Bill relative to school nutrition (House, No. 4459)]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

1 **SECTION 1.** Section 23B of chapter 7 of the General Laws, as appearing in the 2008
2 Official Edition, is hereby amended by striking out, in lines 2 and 3, the words “or authority”,
3 and inserting in place thereof the following words:-, authority or trustees or officers of a state
4 college or university designated by such trustees.

5 **SECTION 2.** Said section 23B of said chapter 7, as so appearing, is hereby further
6 amended by striking out subsection (b) and inserting in place thereof the following 2
7 subsections:-

8 (b) To effectuate the preference for those products of agriculture grown or produced
9 using locally-grown products, the state purchasing agent responsible for procuring the products
10 on behalf of a state agency, authority or trustees or officers of a state college or university
11 designated by such trustees shall, in advertising for bids, contracts or otherwise procuring
12 products of agriculture, make reasonable efforts to facilitate the purchase of such products of
13 agriculture grown or produced using products grown in the commonwealth.

14 (c) The state purchasing agent responsible for procuring the products on behalf of a state
15 agency or authority shall purchase the products of agriculture grown or produced using products

grown in the commonwealth, unless the price of the goods exceeds, by more than 10 per cent, the price of products of agriculture grown or produced using products grown outside of the commonwealth.

SECTION 3. Section 4 of chapter 30B of the General Laws, as so appearing, is hereby amended by striking out subsection (d) and inserting in place thereof the following subsection:-

(d) A procurement officer who follows sound business practices may award a contract which includes individual purchases of less than \$25,000 for the procurement of products of agriculture as defined in section 1A of chapter 128 including, but not limited to, fruits, vegetables, eggs, dairy products, meats, crops, horticultural products and products processed into value added products as part of a Massachusetts farm operation, that are grown or produced using products grown in the commonwealth as well as fish, seafood and other aquatic products, without seeking quotations as required under subsection (a).

SECTION 4. The third paragraph of section 1D of chapter 69 of the General Laws, as so appearing, is hereby amended by striking out the fourth sentence and inserting in place thereof the following 2 sentences:- The standards shall provide for instruction in the issues of nutrition and exercise. The standards may provide for instruction in the issues of physical education, human immunodeficiency virus and acquired immune deficiency syndrome education, violence prevention and drug, alcohol and tobacco abuse prevention.

SECTION 5. The fourteenth paragraph of section 1I of said chapter 69, as so appearing, is hereby amended by striking out clauses (j) and (k) and inserting in place thereof the following 3 clauses:-

(j) multi-cultural education training for students and teachers;

(k) global education; and

(l) nutrition and wellness programs.

SECTION 6. Chapter 111 of the General Laws is hereby amended by adding the following section:-

Section 222. (a) As used in this section, the following words shall have the following meanings:-

“Competitive foods or beverages”, all foods or beverages sold or provided in: (i) à la carte lines in school cafeterias; (ii) school stores; (iii) school snack bars; (iv) vending machines; and (v) any other locations in public schools; provided, however, that competitive foods or beverages shall not include foods sold or provided as part of the School Breakfast Program, the School Lunch Program and the Child and Adult Care Food Program of the United States Department of Agriculture.

“Nutritional standards”, the standards promulgated by the department, in consultation with the department of elementary and secondary education, in accordance with subsection (c).

“Public school”, an elementary, middle, high, charter or innovation school operated by a public school district or board of trustees pursuant to chapter 71.

“School day”, the hours of the day that students must attend school.

(b) The department, in consultation with the department of elementary and secondary education and the department of mental health, shall establish, and periodically review, guidelines for:

(1) the training of all public school nurses in behavioral health and appropriate screening and resources for the treatment of childhood obesity and behavioral health disorders, including eating disorders;

(2) the recognition, treatment and availability of resources for children at risk for and diagnosed with childhood obesity and type 2 diabetes;

(3) professional development and training of public school nurses and aid staff to gain the most up-to-date knowledge on childhood obesity, eating disorders and type 2 diabetes so that they can become more effective at screening for these conditions and making appropriate referrals for treatment; and

(4) the establishment of a referral program where medical resources in the community shall collaborate with public schools to identify children in need of nutritional services, and provide these resources through in-school, outpatient and inpatient settings, where appropriate.

(c)(1) The department, in consultation with the department of elementary and secondary education, shall promulgate regulations establishing nutritional standards for the sale or provision of competitive foods or beverages in public schools.

(2) All competitive foods or beverages sold or provided in public schools shall be limited to foods or beverages that comply with the nutritional standards; provided, however, that the nutritional standards shall not apply to competitive foods or beverages sold on school grounds up to 30 minutes before the beginning of the school day or 30 minutes after the end of the school day, with the exception of competitive foods or beverages sold through vending machines, in which case the nutritional standards shall apply at all times; and provided further, that the department may make reasonable exceptions for the application of the nutritional standards to

competitive foods or beverages sold during the school day at booster sales, concession stands, and other school-sponsored or school-related fundraisers and events.

(3) In developing the regulations, the department, in consultation with the department of elementary and secondary education, shall consider nutritional and dietary recommendations developed by state, federal and independent departments and health advisory associations including, but not limited to: the United States Department of Health and Human Services, the United States Department of Agriculture, the American Dietetic Association, the national School Nutrition Association, the Institute of Medicine, the American Heart Association and the School Nutrition Association of Massachusetts; provided, however, that the department, where appropriate, may develop the regulations in conformity with federal nutritional standards.

(4) The regulations shall include, but not be limited to, the following requirements for public schools:

(i) making available plain, potable water to all public school students during the day, at no cost to the students;

(ii) offering for sale fresh fruit and non-fried vegetables at any location where food is sold; provided, however, that this shall not include non-refrigerated vending machines and vending machines which dispense only beverages;

(iii) making nutritional information available to students for non-prepackaged competitive foods or beverages; provided, however, that this shall not include fresh fruit or fresh vegetables and foods or beverages sold during the school day at booster sales, concession stands, and other school-sponsored or school-related fundraisers and events;

(iv) prohibiting fryolators in the preparation of competitive foods; provided, however, that the department may establish exceptions for the use of fryolators in the preparation of competitive foods sold during the school day at booster sales, concession stands and other school-sponsored or school-related fundraisers and events; and

(v) ensuring that all foods, including competitive foods or beverages sold or provided to students during the school day, meet state and federal food safety requirements.

(d) The department, in collaboration with the department of elementary and secondary education, shall assist public schools in the implementation of the nutritional standards relative to the sale or provision of competitive foods or beverages in public schools. The assistance may include:

(1) additional training in nutrition and diet available for school food service directors;

(2) an assessment of a school's capacity, resources and equipment to prepare and provide recommended foods; and

(3) recommendations on the duration of school lunch periods.

(e) Every 5 years, the department, in consultation with the department of elementary and secondary education, shall conduct a review of the nutritional standards and update the nutritional standards as needed pursuant to subsection (c). In August of the last year of the 5-year period, the department shall report the findings of the review to the speaker of the house of representatives, the president of the senate, the joint committee on health care financing, the joint committee on public health and the joint committee on education. The report shall include, but not be limited to, the following information:

(1) an assessment of the success of implementing the nutritional standards in public schools;

(2) the challenges or barriers experienced by public schools upon implementation of the nutritional standards and guidelines for the sale or provision of competitive foods and beverages;

(3) changes in revenue received from the sale of federally-reimbursable school meals;

(4) changes in total revenue from federally-reimbursable school meals and competitive sales combined that were lost or gained after implementation of the nutritional standards and guidelines for the sale or provision of competitive foods and beverages;

(5) notable changes in student participation in the federally-reimbursable school meals programs; and

(6) recommendations for improvement of the nutritional standards and guidelines for the sale or provision of competitive foods and beverages.

(f) The department, in collaboration with the department of elementary and secondary education, shall promulgate regulations facilitating the establishment of school wellness advisory committees within school districts in order to maximize school districts' eligibility as recipients of federal grant awards. The regulations may require the wellness advisory committees to develop and recommend district-wide wellness policies addressing school nutrition, nutrition education and physical activity. The regulations may further require the wellness advisory committees to periodically review the district-wide wellness policies and implement any recommendations made as a result of this review prior to the following school year. Committee members may include school administrators, school nurses, food service directors, food service staff, parents of students in the school district, students, physical and health education teachers, dietitians, health care professionals and interested community members.

(g) To promote food safety, the department, in collaboration with the department of elementary and secondary education, shall promulgate regulations requiring local health officials to conduct food safety inspections at public schools, in accordance and with the frequency required by state and federal law, or as a result of public complaint or food recall, and to track and report the results of these inspections for each school to the department and the department of elementary and secondary education, including any violations and steps to remediate the violations. The regulations may include minimal qualifications for local health officials responsible with conducting food safety inspections at public schools. All reports and information collected or received by the departments pursuant to the requirements of this subsection shall be a public record subject to section 7 of chapter 4.

SECTION 7. (a) There is hereby established a commission on school nutrition and childhood obesity for the purpose of making an investigation and study of childhood obesity and effective programs promoting proper nutrition and exercise for the children of the commonwealth. The commission shall be co-chaired by the commissioner of public health and the commissioner of elementary and secondary education, or their designees, and shall also include: the commissioner of mental health or the commissioner's designee; the commissioner of agricultural resources or the commissioner's designee; the chair of the statewide student advisory council or the chair's designee; 2 members appointed by the Massachusetts association of school superintendents; 1 member appointed by the Massachusetts association of secondary school administrators; 1 member appointed by the Massachusetts nutrition board; 1 member appointed by the Massachusetts Association for Health, Physical Education, Recreation and Dance; 1 member appointed by the American Heart Association; 1 member appointed by the American Diabetes Association; 1 member appointed by the Massachusetts Parent Teacher Association; 1 member appointed by the Massachusetts Academy of Pediatrics; 1 member of the Massachusetts School Nutrition Association; 2 members appointed by the governor, 1 of whom shall be a representative of the

168 food or beverage industry; 3 members appointed by the senate president and 3 members appointed by the
169 speaker of the house of representatives. The members of the commission shall serve without
170 compensation.

171 (b) The commission shall conduct a comprehensive review of programs promoting proper
172 nutrition for children at each stage of development, both inside and outside of the school setting.
173 The commission's review shall consider, but not be limited to: (1) current school district
174 practices concerning nutrition and physical education in public schools, including, but not limited
175 to, physical education course offerings, class duration and frequency and the physical space and time
176 allotted, if any, for public school students to participate in recess each week; (2) current practices
177 related to the treatment and management of childhood obesity, type 2 diabetes and eating
178 disorders in the school setting; (3) methods for encouraging the consumption of well-balanced,
179 healthy meals, in accordance with the nutritional standards established by the department of
180 public health in subsection (c) of section 222 of chapter 111 of the General Laws, for students
181 both inside and outside of the school setting; (4) the appropriate levels of physical education and
182 activity for all children of the commonwealth; and (5) the utility of developing and implementing
183 pilot initiatives to reduce childhood obesity through school-based, behavioral and incentive-
184 driven programs.

185 (c) The commission shall file a report detailing its review and recommendations, along with
186 any legislative proposals to implement the recommendations, with the clerk of the senate and the
187 clerk of the house of representatives not later than July 31, 2011.

188 **SECTION 8.** Notwithstanding any general or special law to the contrary, the department
189 of elementary and secondary education shall evaluate the success of the Boston public school
190 system's pilot program, known as Chefs in Schools, to provide healthy, cost-effective meals to

students during the school day. The department's report shall identify other public schools in the commonwealth in which similar programs may be implemented and shall include an estimated budget for implementing such programs. The department shall report its findings to the joint committee on public health and the joint committee on education by December 31, 2010.

SECTION 9. (a) The department of agricultural resources shall collect data including, but not limited to:

(1) public school districts and other educational institutions currently purchasing locally-grown farm and locally-harvested fish products, as well as school districts or other educational institutions not yet preferentially purchasing locally-grown farm or locally-harvested fish products;

(2) the type of farm or fish products public schools wish to purchase;

(3) farms interested in selling locally-grown farm or locally-harvested fish products to public schools or other educational institutions;

(4) the types of locally-grown farm and locally-harvested fish products available; and

(5) the names and contact information of farmers, farm organizations, fishermen, or fish processors marketing the locally-grown farm products.

(b) The department of elementary and secondary education shall collect data including, but not limited to:

(1) the name of the procurement contact person at each public school district;

(2) a list of public school districts that feature locally-grown or locally-harvested fish foods on their published cafeteria menus;

212 (3) a list of public school districts that have school garden or greenhouse projects;

213 (4) a list of public school districts that include local agriculture or fishing in their
214 curricula; and

215 (5) a list of public school districts that include serving locally-grown or locally-harvested
216 foods in their wellness policies as a strategy to encourage healthy student meals.

217 (c) Based upon the data collected under subsections (a) and (b), the department of
218 agricultural resources, in consultation with the department of elementary and secondary
219 education, shall work with programs that facilitate the acquisition of local agricultural products
220 or locally-harvested fish products by public schools, including the farm-to-school project
221 developed by the department of agricultural resources, to develop a process by which farms or
222 fish processors interested in selling to public schools may notify public schools and public
223 schools interested in purchasing locally-grown farm or locally-harvested fish products may
224 notify farms; provided, however, that the process ensures fair opportunities for all farms or fish
225 processors interested in selling products to public schools in accordance with applicable laws and
226 regulations

227 (d) The department of agricultural resources, in consultation with the department of
228 elementary and secondary education, shall file a report with the office of the governor, the
229 speaker of the house of representatives, the president of the senate, the joint committee on
230 education, the joint committee on public health and the joint committee on environment, natural
231 resources and agriculture that details the results of the data collected under subsections (a) and
232 (b) of this section, the steps taken to comply with subsection (c) and any recommendations,

233 together with drafts of legislation necessary to carry out those recommendations, by March 1,
234 2011.

235 **SECTION 9.** Notwithstanding any general or special law to the contrary, the department
236 of public health, in consultation with the department of elementary and secondary education,
237 shall develop the nutritional standards as provided in section 222 of chapter 111 of the General
238 Laws not later than January 1, 2011 and the nutritional standards shall be implemented in public
239 schools not later than August 1, 2012.